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South Hills Health System and Automotive Chauffeurs, Parts & Garage Employees, Teamsters Local 926 a/w International Brotherhood of Teamsters, AFL-CIO. Case 6-CA-32207

October 16, 2001

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN AND WALSH

Pursuant to a charge filed on July 30, 2001, the General Counsel of the National Labor Relations Board issued a complaint on August 1, 2001, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 6-RC-11859. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer, with affirmative defenses, admitting in part and denying in part the allegations in the complaint.

On August 27, 2001, the General Counsel filed a Motion for Summary Judgment. On September 5, 2001, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain, but attacks the validity of the certification on the basis of its objections to the election in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.¹

On the entire record, the Board makes the following

¹ The Respondent's request to dismiss the complaint is therefore denied.

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Pennsylvania not-for-profit corporation, has been engaged in the operation of an acute care hospital and related facilities in the Pittsburgh, Pennsylvania area, including its Jefferson Hospital and Jefferson Surgery Center facilities located in Jefferson Hills, Pennsylvania.

During the 12-month period ending June 30, 2001, the Respondent, in conducting its business operations, derived gross revenues in excess of \$250,000 and purchased and received at its Jefferson Hospital and Jefferson Surgery Center facilities goods valued in excess of \$50,000 directly from points outside the Commonwealth of Pennsylvania.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act and a health care institution within the meaning of Section 2(14) of the Act. We also find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held September 13, 2000, the Union was certified on July 3, 2001, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time skilled maintenance employees and non-professional employees, including patient care technicians, patient care rehabilitation technicians, patient care associates, unit clerks, staffing clerks, medical assistants, environmental services associates, couriers, environmental services technicians, department assistants, central services associates, senior central services technicians, central services technicians, guest shop associates, TV attendants, distribution associates, pharmacy department interns, pharmacy technicians, registration associates, central scheduling technicians, medical records associates, medical records chart technicians, medical records coders, medical records transcriptionists, medical records atlas, medical records correspondence technicians, medical records data entry associates, medical records staff assistants, rehabilitation associates, sportsmedicine associates, audio-visual associates, audio-visual specialists, telecommunications associates, telecommunications technicians, emergency technicians, dispatchers, courtesy associates, staff assistants, driver technicians, facility associates, draftspersons, certified facility technicians, facility technicians, repair technicians, food/ nu-

trition associates, prep specialists, cooks, store associates, production associates, registration associates, inventory associates, phlebotomists, lab associates, drivers, multitest technicians, transcriptionists, data entry associates, materials associates, receiver associates, purchasing specialists, inventory technicians, certified biomedical technicians, biomedical technicians, radiology associates, graphic designers, credentials specialists, cardiology (EKG) technicians and EEG technicians, employed by the Employer at its Jefferson Hospital and Jefferson Surgery Center facilities located in Jefferson Hills, Pennsylvania; excluding all business office clerical employees, technical employees, and guards, professional employees and supervisors as defined in the Act, and all other employees.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

On or about July 6, 2001, the Union, by letter, requested the Respondent to bargain and, since on or about July 16, 2001, the Respondent has failed and refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

By failing and refusing on and after July 16, 2001, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, South Hills Health System, Jefferson Hills,

Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Automotive Chauffeurs, Parts & Garage Employees, Teamsters Local 926 a/w International Brotherhood of Teamsters, AFL-CIO, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time skilled maintenance employees and non-professional employees, including patient care technicians, patient care rehabilitation technicians, patient care associates, unit clerks, staffing clerks, medical assistants, environmental services associates, couriers, environmental services technicians, department assistants, central services associates, senior central services technicians, central services technicians, guest shop associates, TV attendants, distribution associates, pharmacy department interns, pharmacy technicians, registration associates, central scheduling technicians, medical records associates, medical records chart technicians, medical records coders, medical records transcriptionists, medical records atlas, medical records correspondence technicians, medical records data entry associates, medical records staff assistants, rehabilitation associates, sportsmedicine associates, audio-visual associates, audio-visual specialists, telecommunications associates, telecommunications technicians, emergency technicians, dispatchers, courtesy associates, staff assistants, driver technicians, facility associates, draftspersons, certified facility technicians, facility technicians, repair technicians, food/nutrition associates, prep specialists, cooks, store associates, production associates, registration associates, inventory associates, phlebotomists, lab associates, drivers, multitest technicians, transcriptionists, data entry associates, materials associates, receiver associates, purchasing specialists, inventory technicians, certified biomedical technicians, biomedical technicians, radiology associates, graphic designers, credentials specialists, cardiology (EKG) technicians and EEG technicians, employed by the Employer at its Jef-

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Jefferson Hospital and Jefferson Surgery Center facilities located in Jefferson Hills, Pennsylvania; excluding all business office clerical employees, technical employees, and guards, professional employees and supervisors as defined in the Act, and all other employees.

(b) Within 14 days after service by the Region, post at its facilities in Jefferson Hills, Pennsylvania, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 16, 2001.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. October 16, 2001

Peter J. Hurtgen,	Chairman
Wilma B. Liebman,	Member
Dennis P. Walsh,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX
NOTICE TO EMPLOYEES
Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Automotive Chauffeurs, Parts & Garage Employees, Teamsters Local 926 a/w International Brotherhood of Teamsters, AFL-CIO as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time skilled maintenance employees and non-professional employees, including patient care technicians, patient care rehabilitation technicians, patient care associates, unit clerks, staffing clerks, medical assistants, environmental services associates, couriers, environmental services technicians, department assistants, central services associates, senior central services technicians, central services technicians, guest shop associates, TV attendants, distribution associates, pharmacy department interns, pharmacy technicians, registration associates, central scheduling technicians, medical records associates, medical records chart technicians, medical records coders, medical records transcriptionists, medical records atlas, medical records correspondence technicians, medical records data entry associates, medical records staff assistants, rehabilitation associates, sportsmedicine associates, audio-visual associates, audio-visual specialists, telecommunications associates, telecommunications technicians, emergency technicians, dispatchers, courtesy associates, staff assistants, driver technicians, facility associates, draftspersons, certified facility technicians, facility technicians, repair technicians, food/nutrition associates, prep specialists, cooks, store associates, production associates, registration associates, inventory associates, phlebotomists, lab associates, drivers, multitest technicians, transcriptionists, data entry associates, materials associates, receiver associates, purchasing specialists, inventory technicians, certified biomedical technicians, biomedical technicians, radiology associates, graphic designers, credentials specialists, cardiology (EKG) technicians and EEG technicians, employed by us at our Jefferson Hospital and Jefferson Surgery Center facilities located in Jefferson Hills, Pennsylvania; excluding all business office clerical employees, technical employees, and

guards, professional employees and supervisors as defined in the Act, and all other employees.

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